



Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Dentistry, Department of Health Professions
Virginia Administrative Code (VAC) citation	18 VAC 60-20
Regulation title	Regulations Governing the Practice of Dentistry
Action title	Temporary license for dental residents
Document preparation date	6/19/04

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Preamble

The APA (Code of Virginia § 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.

- 1) Please explain why this is an “emergency situation” as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

The adoption of an “emergency” regulation by the Board of Dentistry is required to comply with statutory language in § 54.1-2711.1 and the second enactment clause in HB 1049 passed by the 2004 General Assembly (Chapter 754 of the Acts of the Assembly). § 54.1-2711.1 B authorizes the Board to adopt regulations for licensure of persons enrolled in advanced dental education programs: “*The Board may prescribe such regulations not in conflict with existing law and*

require such reports from any hospital or the school of dentistry operating an accredited advanced dental education program in the Commonwealth as may be necessary to carry out the provisions of this section.”

The second enactment clause of Chapter 754 states “*That the Board of Dentistry shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment,*” requiring the adoption of the regulation as an emergency in accordance with the Administrative Process Act, § 2.2-4011, which states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. Chapter 754 was enacted on April 12, 2004, the day HB1049 was signed by the Governor.

Section 91 is adopted to: 1) set out the educational requirements for issuance of a temporary license, including a recommendation from the dean or director of the advanced dental program; 2) establish the limitations on practice; 3) provide for renewal of the license based on continued recommendation by the program and limited to five times; and 4) specify that the temporary license holder is accountable to a licensed dentist who is a member of staff where the residency or internship is being served.

Legal basis

Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Board of Dentistry the authority to promulgate regulations to administer the regulatory system:

§ 54.1-2400 -General powers and duties of health regulatory boards

The general powers and duties of health regulatory boards shall be:

...

6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.) of this title. ...

In § **54.1-2711.1** of the Dental Practice Act, the Board of Dentistry is authorized to issue a temporary license, as prescribed in regulations:

Upon recommendation by the dean of the school of dentistry, the Board may issue a temporary annual license to practice dentistry to persons enrolled in advanced dental education programs,

servicing as dental interns, residents or post-doctoral certificate or degree candidates in hospitals or schools of dentistry that maintain dental intern, residency or post-doctoral programs accredited by the Commission on Dental Accreditation of the American Dental Association.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of the action is to comply with the statutory mandate in the enactment clause of Chapter 754 of the 2004 Acts of the Assembly and prescribe those regulations necessary to carry out the provisions of § 54.1-2711.1 on the issuance of temporary annual licenses for persons enrolled in advanced dental education programs. By granting a limited license and requiring oversight from a licensed member of the dental program, the Board will authorize practice and the prescribing of controlled substances with appropriate safeguards in place. Regulations clearly provide that licensure only extends for the duration of the time in a graduate or post-doctoral program and is confined to work in an outpatient clinic that is a recognized part of an advanced dental education program. The new provision in Chapter 27 of Title 54.1 and proposed regulations to implement the law will authorize practice in dental programs on a par with licensure of interns and residents enrolled in advanced medical programs.

Substance

Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons why the regulation is essential to protect the health, safety, or welfare of Virginians. Delineate any potential issues that may need to be addressed as a permanent final regulation is developed.

Current section number	Proposed new section number if applicable	Current requirement	Proposed change and rationale
20	n/a	n/a	<p>Currently, there are no fees established for a temporary resident's license, so the proposed rules set the schedule for annual expiration of a license at June 30th, set the application fee at \$55 and the annual renewal fee at \$35. A fee for a late renewal is set at \$15.</p> <p>Currently, other special licenses, such as a teacher's license, expire on June 30th. The Board has included the resident license among the list of those that have a June expiration date.</p> <p>Since the resident's license under Dentistry is modeled in law and regulation after the intern/resident license in Medicine, the Board proposes to charge the same fees. While the fees are a fraction of</p>

n/a	91	n/a	<p>those charged to fully licensed dentists, there are severe limitations on practice by residents with a temporary license, so the lesser fee is deemed appropriate.</p> <p>Subsection A sets the requirements for issuance of a temporary license to include:</p> <ol style="list-style-type: none"> 1. Successful completion of a D.D.S. or D.M.D. dental degree program required for admission to board-approved examinations and submission of a letter of confirmation from the registrar of the school or college conferring the professional degree, or official transcripts confirming the professional degree and date the degree was received. <i>(Subsection A of § 54.1-2711.1 requires that an applicant for the license must have successfully completed the academic education required for admission to examination given by the Board, so the regulation specifies what evidence must be provided to verify completion.)</i> 2. Submission a recommendation from the dean of the dental school or the director of the accredited graduate program specifying the applicant’s acceptance as an intern, resident or post-doctoral certificate or degree candidate in an advanced dental education program. The beginning and ending dates of the internship, residency or post-doctoral program must be specified. <i>(Since enrollment in an advanced dental education program is a statutory requirement for a temporary license, the regulations set out the evidence required to verify such enrollment and the length of the program. The law specifies that the license expires upon the holder’s graduation, withdrawal or termination from the relevant program.)</i> <p>Subsection B specifies that the temporary license applies only to practice in the hospital or outpatient clinics of the hospital or dental school where the internship, residency or post-doctoral time is served. Outpatient clinics in a hospital or other facility must be a recognized part of an advanced dental education program. <i>(The temporary license is valid only during the course of enrollment in a program and does not permit practice outside the program.)</i></p> <p>Subsection C states that the temporary license may be renewed annually, for up to five times, upon the recommendation of the dean of the dental school or director of the accredited graduate program. <i>(Renewal is allowed for up to 5 times to accommodate those dentists who may be enrolled in a six-year advanced residency in a specialty.)</i></p> <p>D. The temporary license holder shall be responsible and accountable at all times to a licensed dentist, who is a member of the staff where the internship, residency or post-doctoral candidacy is served. The temporary licensee is prohibited from employment outside of the advanced dental education program where a full license is required. <i>(The temporary license does not authorize independent practice and is issued to individuals who have not been examined and found competent for a full license to practice dentistry. Therefore, the oversight by and accountability to</i></p>
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Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

There are no alternatives to the adoption of regulations for the issuance of a temporary license for persons enrolled in advanced dental education programs, as it is mandated by Chapter 754 of the 2004 Acts of the Assembly. Legislation was introduced at the request of the Dean of the VCU-MCV School of Dentistry to address a problem encountered by residents working in dental clinics connected to the school. Without a license issued by the Board, residents do not have authorization under the Drug Control Act to prescribe and administer controlled substances. Therefore, it was necessary to defer the drug until a licensed dentist (usually a member of faculty) could be found to write the prescription. It was less than optimal care and, at best, caused patients to be inconvenienced.

Language in § 54.1-2711.1 was modeled after § 54.1-2937, which authorizes the Board of Medicine to grant a temporary license to medical interns and residents. Likewise, the requirements for applying for and renewing a temporary resident license are similar to those found in section 220 of 18VAC85-20, Regulations of the Board of Medicine for temporary licenses for interns and residents. Regulations require continued enrollment in an advanced dental education program in order to retain the temporary license for a period of 6 years. They also require accountability to a licensed dentist and prohibit employment outside the hospital or outpatient clinics of the dental school.

Family impact

Please assess the impact of the emergency regulatory action on the institution of the family and family stability.

There is no impact of the emergency regulatory action on the institution of the family and family stability.